

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JOHN PAUL FRANK SCHOWACHERT,

Plaintiff,

v.

POLLEY,

Defendant.

Case No. 1:25-cv-00121-BAM (PC)

ORDER DIRECTING CLERK OF COURT TO
RANDOMLY ASSIGN DISTRICT JUDGE TO
ACTION

FINDINGS AND RECOMMENDATIONS
RECOMMENDING PLAINTIFF'S MOTION
FOR LEAVE TO PROCEED *IN FORMA*
PAUPERIS BE DENIED

(ECF No. 2)

FOURTEEN (14) DAY DEADLINE

Plaintiff John Paul Frank Schowachert ("Plaintiff") is a state prisoner proceeding *pro se* in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff initiated this action on January 29, 2025, together with a motion to proceed *in forma pauperis*. (ECF Nos. 1, 2.)

Plaintiff is subject to 28 U.S.C. § 1915(g), which provides that "[i]n no event shall a prisoner bring a civil action . . . under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury."¹

¹ The Court takes judicial notice of the following United States District Court cases: (1) *Schowachert v. Polley*, Case

1 The Court has reviewed Plaintiff's complaint and finds that his allegations do not satisfy
 2 the imminent danger exception to section 1915(g).² *Andrews v. Cervantes*, 493 F.3d 1047,
 3 1053–55 (9th Cir. 2007). In the complaint, Plaintiff alleges that on an unspecified date he
 4 suffered a closed head traumatic brain injury that was then covered up by staff at the Tuolumne
 5 County Jail, who failed to provide him with appropriate medical treatment. Plaintiff alleges that
 6 he has suffered a complete loss of an ability to live a normal life with his wife, house, or kids, and
 7 he is no longer able to bike, fish, or run. (ECF No. 1.)

8 Based on the allegations in the complaint, Plaintiff has failed to allege that he was in any
 9 imminent danger of serious physical injury at the time the complaint was filed. Plaintiff has
 10 identified a single defendant, Tuolumne County Jail Commander Bill Polley, but has not
 11 identified what role Defendant Polley played in any of the events that occurred. It also appears
 12 that the incident occurred while Plaintiff was housed at Tuolumne County Jail, but at the time of
 13 filing, Plaintiff was housed at Salinas Valley State Prison. “[I]n order to qualify for the § 1915(g)
 14 imminent danger exception, a three-strikes prisoner must allege imminent danger of serious
 15 physical injury that is both fairly traceable to unlawful conduct alleged in his complaint and
 16 redressable by the court.” *Ray v. Lara*, 31 F.4th 692, 701 (9th Cir. 2022). Plaintiff is no longer
 17 housed at the institution where Defendant Polley is employed, and Plaintiff does not allege that he
 18 is in any imminent danger of serious physical injury that is related to the incident raised in the
 19 complaint or that could be redressed by the court in this action.

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 22 No. 1:22-cv-01249-JLT-BAM (E.D. Cal.) (dismissed on November 8, 2022 as duplicative); (2) *Schowachert v.*
 23 *Sorano*, Case No. 1:21-cv-00975-JLT-HBK (E.D. Cal.) (dismissed on November 2, 2023 for failure to exhaust clear
 24 on the face of the complaint); (3) *Schowachert v. Polley*, Case No. 1:23-cv-01579-JLT-EPG (E.D. Cal.) (dismissed
 25 on December 19, 2023 as duplicative); (4) *Schowachert v. Polley*, Case No. 1:23-cv-01645-KES-SAB (E.D. Cal.)
 26 (dismissed on July 8, 2024 as duplicative); (5) *Schowachert v. Polley*, Case No. 1:24-cv-00713-KES-CDB (E.D.
 Cal.) (dismissed on December 19, 2024 as duplicative and time-barred). In actions filed by a plaintiff proceeding *in*
forma pauperis, a dismissal of the action as duplicative is considered a dismissal of a case on the grounds that it is
 frivolous or malicious pursuant to 28 U.S.C. § 1915(g). *Cato v. United States*, 70, F.3d 1103, 1105 n.2 (9th Cir.
 1995).

27 ² While the Court expresses no opinion on the merits of Plaintiff's claims, it appears Plaintiff's claim may be time-
 28 barred. Although Plaintiff does not specify a date when the events in the complaint occurred, based on a review of
 Plaintiff's extensive litigation history it appears Plaintiff has repeatedly attempted to raise the same claim, arising
 from an incident in 2017. See cases cited *supra*, footnote 1.

Plaintiff has not satisfied the exception from the three strikes bar under 28 U.S.C. § 1915(g), and Plaintiff must pay the \$405.00 filing fee if he wishes to litigate this action.

Accordingly, the Court HEREBY ORDERS the Clerk of the Court to randomly assign a District Judge to this action.

Further, it is HEREBY RECOMMENDED that:

1. The motion to proceed *in forma pauperis*, (ECF No. 2), be DENIED, pursuant to 28 U.S.C. § 1915(g); and
2. Plaintiff be ORDERED to pay the \$405.00 initial filing fee in full to proceed with this action.

* * *

These Findings and Recommendations will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen (14) days** after being served with these Findings and Recommendations, the parties may file written objections with the court. The document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” **Objections, if any, shall not exceed fifteen (15) pages or include exhibits. Exhibits may be referenced by CM/ECF document and page number if already in the record before the Court. Any pages filed in excess of the 15-page limit may not be considered.** The parties are advised that failure to file objections within the specified time may result in the waiver of the “right to challenge the magistrate’s factual findings” on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838–39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: February 5, 2025

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE